

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

BILLY WAYNE LEWIS, #1057794

§

VS.

§

CIVIL ACTION NO. 6:14cv835

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

Petitioner Billy Wayne Lewis, a prisoner confined at the Coffield Unit of the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition should be dismissed for failure to obey an order and want of prosecution. The Petitioner has filed a response referencing both this case and the Report and Recommendation issued in Civil Action No. 6:14cv848.

The Petitioner's response does not address the reasons provided by Magistrate Judge Love as to why the case should be dismissed. It is additionally noted that the response is internally inconsistent. At times, he states that he has no objections to the dismissal of the petition. At other times, he complains about actions taken by the Court. He complained that the Court stated that he did not pay the \$5 filing fee when he actually paid the fee. His assertion that he paid the filing fee is correct. The petition was filed on November 6, 2014, and the filing fee was received at that time. However, the payment of the fee was not docketed until November 7, 2014. An order (docket entry

#4) was issued instructing him to pay the fee before the receipt of the \$5 filing fee was entered. Nonetheless, he correctly observed that he paid the filing fee when the lawsuit was filed.

The Petitioner also stated that he was confused about how to get an answer from the Director regarding his claim. His petition includes a complaint that his good time was not restored. He filed an application for a writ of habeas corpus in state court about this issue. On March 12, 2014, the Texas Court of Criminal Appeals dismissed the application in Cause Number WR-50,029-12. The application was dismissed without consideration of the merits pursuant to TEX. GOV'T CODE § 501.0081(b)-(c). In other words, the application was dismissed because he had not filed a time credit dispute resolution with the prison system before he filed the application. In his response, he attached a document showing that he filed a time credit dispute resolution and received a response on August 11, 2014. However, the response was dated five months after his state application was dismissed. Since he has filed and received a response to his time credit dispute resolution, he is now in a position to file a new application for a writ of habeas corpus in state court. If the Texas Court of Criminal Appeals denies the application on the merits, then he will be in a procedural posture to return to this Court with a new petition for a writ of habeas corpus regarding the good time issue. The Petitioner is placed on notice, however, that there is a one year statute of limitations in federal habeas cases.

Overall, the Petitioner's response does not contain objections, although he raises issues for the Court's consideration. The issues have been fully considered by the Court. The Report and Recommendation of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the issues raised by Petitioner, the Court is of the opinion that the

findings and conclusions of the Magistrate Judge are correct. The Court thus adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition is **DISMISSED** without prejudice for failure to obey an order and want of prosecution. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas. It is further

**ORDERED** that a certificate of appealability is **DENIED**. It is finally

**ORDERED** that all motions not previously ruled on are **DENIED**.

**So ORDERED and SIGNED this 27th day of January, 2015.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**